

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-428
Table of Allotments,)	RM-11124
FM Broadcast Stations.)	
(Clatskanie, Oregon, Long Beach and Ilwaco,)	
Washington))	

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: December 1, 2004

Released: December 3, 2004

Comment Date: January 24, 2005

Reply Comment Date: February 8, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Portmeirion Partners ("Petitioner"), proposing the allotment of Channel 225C3 to Clatskanie, Oregon, as its first local aural transmission service. Petitioner states that he will file an application for Channel 225C3 at Clatskanie, if allotted.

2. In order to accommodate the allotment of Channel 225C3 at Clatskanie, Petitioner proposes the substitution of Channel 259A for Channel 224A at Long Beach, Washington and modification of the license for Station KAQX(FM) at its current transmitter site.¹ Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest. Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.² Therefore, we will issued an *Order to Show Cause* to New Northwest Broadcasters, LLC ("New Northwest"), licensee of Station KAQX(FM), Long Beach, Washington, to show cause why its license should not be modified as proposed. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred.³ Petitioner has stated its willingness to reimburse the licensee of Station KAQX(FM) for reasonable costs associated with changing to Channel 259A, should it become the ultimate permittee of Channel 225C3 at Clatskanie.

¹ The reference coordinates for Station KAQX(FM) are 46-18-51 NL and 124-03-07 WL with a site restriction of 4.3 kilometers (2.6 miles) south of Long Beach.

² 47 C.F.R. § 1.87. *See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

³ *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

3. Additionally, to accommodate the substitution at Long Beach, Petitioner proposes the substitution of Channel 253A for vacant Channel 259A at Ilwaco, Washington using the same reference coordinates.⁴

4. Petitioner asserts that Clatskanie is an incorporated city with a 2000 U.S. Census population of 1,528 persons, and its own zip code 97016. Clatskanie has its own mayor and city council, fire and police departments, utility and sanitary services according to Petitioner. Additionally, Petitioner states that there are several local businesses including Clatskanie Motel, Clatskanie Family Chiropractic, and Clatskanie Mini Mart, as well as the Clatskanie Chamber of Commerce and the Clatskanie Kiwanis Club.

5. The proposal to allot Channel 225C3 at Clatskanie warrants consideration since it would provide first local service to that community.⁵ A staff engineering analysis indicates that Channel 225C3 can be allotted to Clatskanie consistent with the minimum distance separation requirements of the Commission's rules.⁶ Because the reference coordinates for: Channel 225C3 at Clatskanie, Oregon, Channel 259A at Long Beach, Washington, and Channel 253A at Ilwaco, Washington are all located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence will be requested.

6. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b),⁷ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Clatskanie, Oregon	---	225C3
Ilwaco, Washington	259A, 280C3	253A, 280C3
Long Beach, Washington	224A	259A

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, New Northwest Broadcasters, LLC, licensee of Station KAQX(FM), SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 259A in lieu of Channel 224A at Long Beach, Washington.⁸

⁴ The coordinates of the Ilwaco allotment are 46-18-33 NL and 124-02-31 WL with a site restriction of 1 kilometer (0.6 miles) northwest of the community.

⁵ The proposed Clatskanie allotment is short spaced to Station KAST-FM, Channel 225C1 at Astoria, Oregon. Channel 226C3 was substituted for Channel 225C1, reallocated to Gladstone, Oregon, and KAST-FM's license was modified accordingly, pursuant to a *Report and Order* issued in MB Docket 02-136. *See Arlington, et al.*, 19 FCC Rcd 12803 (MB 2004). An Application for Review and a Petition for Reconsideration of the *Report and Order* were filed separately on August 20, 2004. We caution parties, however, that this proposal will be granted subject to the outcome of MB Docket No. 02-136, because proposals in that proceeding are effective but not final. *See Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (MB 2003).

⁶ The proposed reference coordinates for Channel 225C3 at Clatskanie are 46-17-44 NL and 123-14-13 WL with a site restriction of 21.5 kilometers (13.3 miles) north of the community.

⁷ 47 C.F.R. § 73.202(b).

⁸ KAQX's license for Channel 232A Long Beach was modified to specify operation on Channel 224A pursuant to *Arlington, The Dalles, Moro, et al.*, 19 FCC Rcd 12803 (2004).

8. Pursuant to Section 1.87, New Northwest, may, no later than January 24, 2005, file a written statement showing with particularity why its Station KAQX license should not be modified as proposed in this *Order to Show Cause*. The Commission may call on New Northwest to furnish additional information. If New Northwest raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, New Northwest will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following:

H. Anne Swanson, Esq.
Counsel to New Northwest Broadcasters, LLC
Dow, Lohnes & Albertson PLLC
1200 New Hampshire Ave., N.W.
Washington, D.C. 20003-6802

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

11. Pursuant to Sections 1.415 and 1.419,⁹ interested parties may file comments on or before January 24, 2005, and reply comments on or before February 8, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

John J. McVeigh, Esq.
Counsel to Portmeirion Partners
12101 Blue Paper Trail
Columbia, Maryland 21044-2787

12. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁹ 47 C.F.R. §§ 1.415 and 1.419.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b).¹⁰ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* Section 3506(c)(4).¹¹

14. For further information concerning a proceeding listed above, contact Helen McLean, Media Bureau (202) 418-2738. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

¹⁰ *See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (Feb. 9, 1981).

¹¹ 44 U.S.C. § 3506(c)(4).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.